

Add Section 483.7 to the Penal Code to make it a crime to use any badge, identification card, or other insignia of any department or agency of the State of California for fraudulent purposes. Amend Section 530.5 of the Penal Code to make it a felony to obtain personal identifying information using a fraudulent federal, state, or local government form.

Source: Honorable John Chiang

Under existing Section 470a of the California Penal Code, altering, falsifying, forging, duplicating, counterfeiting a driver's license or identification card issued by a governmental agency, with the intent to commit forgery, is punishable as a misdemeanor or felony. Under Section 472, any person, with intent to defraud another, who forges or counterfeits the seal of this State, or who falsely makes any impression of such seal, is guilty of forgery. Section 483.5 makes it a misdemeanor or a felony to make, sell, furnish, or use a "deceptive identification document." A "deceptive identification document" is a document not issued by a federal or state governmental agency and could reasonably deceive an ordinary person into believing that it is issued by a government agency, including, but not limited to, a driver's license, identification card, birth certificate, passport, or social security card.

Section 529 of the California Penal Code makes it a crime to falsely personate another under specified circumstances. Section 529.5 makes it a misdemeanor to manufacture, sell, or transfer, any document, purporting to be a government-issued identification card or driver's license, which could reasonably deceive an ordinary person into believing that it was issued by a government agency. Section 530.5 relates to identify theft. Under this section, any person who willfully obtains personal identifying information of another person, and uses that information unlawfully, is guilty of a public offense, punishable as a misdemeanor or felony.

Identity theft is also a federal crime under the Identity Theft Assumption and Deterrence Act of 1998. This Act prohibits the transfer or use, without lawful authority, of another person's identification with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of federal law, or that constitutes a felony under any applicable State or local law. Violations of this Act are investigated by federal agencies such as the Secret Service, the FBI, and the Postal Inspection Service and prosecuted by the U.S. Department of Justice.

In May 2002, the Internal Revenue Service (IRS) reported a fraudulent scheme to steal taxpayers' identity and financial data. This scheme involved the distribution of fictitious bank correspondences and IRS forms in an attempt to trick taxpayers into disclosing personal and banking data. In this scam, a letter claiming to be from the taxpayer's bank stated that the bank was updating its records in order to exempt the taxpayer from reporting interest or having tax withheld on interest paid on his or her bank or other

financial accounts. The letter urges the taxpayer to complete and mail the forms within a specified number of days or lose the reporting and withholding exemption. The phony IRS forms requested personal data such as, social security number or passport number, bank account number, and mother's maiden name. The fictitious forms attempted to mimic the genuine IRS forms, but requested personal data not contained on the actual IRS forms.

Persons applying for permits, certificates, or licenses, or filing tax returns, statements, or other forms prescribed by the Board of Equalization (BOE), are asked to provide personal information such as: social security number, federal employer identification number, driver's license number, California Secretary of State number, and name and location of bank or other financial institution including checking and savings account number(s). A variety of frequently requested BOE forms and publications are available on the BOE's website. Some forms can be completed on-line and printed out for mailing to the BOE.

Due to the availability of forms on the Internet and the increase in computer technology, it is easier to alter and falsify documents. While the BOE has no reported cases of stolen identity and financial data, the BOE has noted a few incidences involving falsified documents. In one incident, a taxpayer falsified an Escrow Demand Letter (BOE-874) and submitted the document to an escrow company to deceive the company into believing that the taxpayer had no tax liabilities. As a result, all proceeds from the sale of the property were released without the BOE getting paid for the tax liability due. Additionally, the BOE's Fuel Tax Division has heard of incidences of forged Interstate Fuel Tax Agreement (IFTA) licenses and California Fuel Trip Permits and stolen IFTA decals.

Identity theft and identity fraud are the fastest growing crimes in the United States. Many statutes on privacy issues (credit card, credit reporting, debt collection practices, check writing, computer crime, electronic commerce, DMV records, employment records, medical records, etc.) have been enacted by the California legislature. However, existing law does not specifically make it a crime to use state badges and identification cards and government forms for fraudulent purposes. Furthermore, with the improvement in computer technology, it is easier to falsify government forms to obtain personal data and commit identity theft. By making it a felony to use government forms to commit identity theft, it deters criminals from creating scams to steal identity and financial data.

In order to properly prosecute and punish those who would deceptively obtain personal information, this proposal would make it a crime for any badge, identification card, or other insignia of any department or agency of the State of California to be used for fraudulent purposes, punishable as a misdemeanor or felony. It would also make it a crime for any person who uses a form represented as an official federal, state, or local government form to commit identity theft, punishable as a felony.

Section 483.7 is added to the Penal Code to read:

483.7. Any person who manufactures, sells, offers for sale, furnishes, uses or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the State of California for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of such badge, identification card, or other insignia, or any colorable imitation thereof, and who knows or has reason to know that such item will be used for fraudulent purposes is guilty of a crime. Upon conviction therefore, the person shall be punished by imprisonment in county jail not to exceed one year, or by imprisonment in the state prison.

Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars (\$1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars (\$10,000), or both that imprisonment and fine.

(b) "Personal identifying information," as used in this section, means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number of an individual person.

(c) In any case in which a person willfully obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

(d) Any person who uses a form that is represented as an official federal, state, or local government form to commit the offense described in subdivision (a) shall, upon conviction therefore, be punished by imprisonment in state prison, a fine not to exceed ten thousand dollars (\$10,000), or both.